

**Terpening Trucking Co., Inc. and Gene R. Lariviere  
Terpening Drivers Association and Gene R. Lariviere.** Cases 3-CA-11101 and 3-CB-4081

29 June 1984

### DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS  
HUNTER AND DENNIS

On 24 June 1983 Administrative Law Judge Eleanor MacDonald issued the attached decision. The Respondent Company filed exceptions and a supporting brief, and the Respondent Union filed exceptions. The Charging Party filed a motion to reject exceptions and the Respondent Company filed a statement in opposition to the motion to reject exceptions.<sup>1</sup>

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>2</sup> and

<sup>1</sup> On 2 August 1983 the Respondent Company filed exceptions and a supporting brief with the Board, along with a certificate of service asserting that copies had been served on the General Counsel and the Respondent Union. On the same day the Respondent Union filed exceptions with the Board and on 11 August 1983 it filed a certificate of service asserting that copies had been mailed to the General Counsel and the Respondent Company. On 29 August 1983 Gene R. Lariviere, the Charging Party, filed a motion to reject exceptions asserting that, since he had never been served with a copy of the Respondent Union's exceptions and had only received a "courtesy" copy of the Respondent Company's exceptions and supporting brief on 23 August 1983, the Respondents' exceptions and brief should be rejected and the decision of the judge adopted. On 6 September 1983 the Respondent Company filed a statement in opposition to the motion to reject exceptions, urging the Board to deny the motion because the Charging Party did not file a separate appearance in this proceeding but relied on the General Counsel's representation. The Respondent Company also argues that the Charging Party has not suffered any prejudice because he has never expressed any intention to file cross-exceptions or a brief and never requested an extension of time to file cross-exceptions after he received a copy of the Respondent Company's exceptions and brief.

The Charging Party does not contend he has suffered any prejudice due to the alleged failure to serve exceptions and has given no indication he would like to file exceptions or a brief of his own. Moreover, Sec. 102.112 of the Board's Rules and Regulations does not require the Board to vitiate exceptions and adopt an administrative law judge's decision in the absence of properly served exceptions particularly where, as here, the charging party has not shown it has been prejudiced, or requested an opportunity to file cross-exceptions or a brief. See generally *Our Way, Inc.*, 244 NLRB 236 (1979), and *Cameron Iron Works*, 235 NLRB 287 (1978). The Charging Party's motion is therefore denied.

<sup>2</sup> In fn. 13 and in the sentence citing to fn. 18 the judge incorrectly referred to events as occurring in May instead of June 1982. We correct this inadvertent error.

The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

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conclusions and to adopt the recommended Order as modified.

### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent Company, Terpening Trucking Co., Inc., Syracuse, New York, its officers, agents, successors, and assigns, and the Respondent Union, Terpening Drivers Association, Syracuse, New York, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

Insert the following as paragraph A,2(b) and re-letter the subsequent paragraphs.

"(b) Expunge from its files any references to the discharges of Gene R. Lariviere and Howard Bagley on 24 June 1982 and notify them in writing that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel actions against them."

### DECISION

#### STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was tried in Syracuse, New York, on February 8, 9, and 10 and March 9 and 10, 1983. The complaint, dated August 20, 1982, alleges that Respondent Employer interrogated employees, discharged employees Gene R. Lariviere and Howard Bagley, and deducted dues for the Union without prior written authorization from the employees in violation of Section 8(a)(1), (2), and (3) of the Act, and that Respondent Union fairly failed to represent Gene R. Lariviere and Howard Bagley and accepted dues deducted by the Company without prior written authorization from the employees in violation Section 8(b)(1)(A).

Respondents deny the material allegations of the complaint, and the Union contends that the alleged discriminatees have not exhausted remedies available to them under the grievance and arbitration provisions of the collective-bargaining agreement.

On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Company, I make the following

#### FINDINGS OF FACT

##### I. JURISDICTION

The Company, a New York corporation with a place of business in Syracuse, New York, is engaged in the distribution of light petroleum products. All parties agree that the Company annually provided services valued in excess of \$50,000 to a company directly involved in interstate commerce. I find that the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a

labor organization within the meaning of Section 2(5) of the Act.<sup>1</sup>

## II. THE ALLEGED UNFAIR LABOR PRACTICES

There is general agreement about the broad factual outlines of the instant case; the parties disagree only as to certain details and the legal conclusion to be drawn from the facts.

Terpening Trucking is an old, family-owned company engaged in the transport and delivery of light petroleum products such as heating oil and gasoline.<sup>2</sup> Many of the 15 truckdrivers have been with the Company for a number of years.<sup>3</sup> Terpening Drivers Association has represented the employees since approximately 1952, when it was recognized by the Employer. The Union has operated in a very informal manner and many of its functions have been social. There has never been an arbitration proceeding between the Company and the Union, and collective-bargaining negotiations seem to have been conducted in a cooperative rather than an adversary manner. When Gene R. Lariviere and Howard Bagley were hired in February and October 1980, respectively, they brought a different perspective to the view of the appropriate union-employer relationship based on their experiences working for employers with more militant unions. Lariviere and Bagley urged their fellow employees at the Company to question certain company actions and they attempted to effectuate some intraunion changes as well.<sup>4</sup> These efforts by Bagley and Lariviere caused friction and antagonism to develop within the work force and culminated in a lengthy "rap session" among some employees and members of management in which the employees angrily complained that Lariviere and Bagley were disruptive and unpleasant to such a degree that they were becoming dissatisfied with the work environment. Bagley and Lariviere were discharged the morning after this talk took place for "harassing" their fellow employees. The Union did not file a grievance nor seek arbitration on their behalf because the union members agreed with management's termination of Bagley and Lariviere.

<sup>1</sup> There was a suggestion at the trial herein that the Terpening Drivers Association was a social organization and not a labor organization under the Act. The evidence shows that the Association was founded 30 years ago, that it regularly enters into collective-bargaining agreements with Respondent Employer concerning wages, hours, and working conditions, and that it conducts negotiations with the Employer concerning these subjects.

<sup>2</sup> Officers of the Company are: Richard Terpening, chairman of the board; Charles Terpening, president; Curtis Stiles, vice president; and George Terpening, secretary-treasurer.

<sup>3</sup> The parties agree that the Union is the exclusive collective-bargaining representative of the Company's employees in a unit of "all employees engaged in the operation and driving of the tank trucks of Respondent Employer excluding guards and supervisors as defined in the Act."

<sup>4</sup> Richard Chellis, currently president of the Union, testified that he viewed the Union primarily as a social group. Chellis thought Lariviere saw the Union as a method of getting more pay for fewer hours of work. Before Lariviere began working at the Company, the drivers had been content with the loose way the Union was run and there was no internal conflict. But Lariviere put pressure on the men in connection with his goals for the Union and Chellis recalled that Lariviere criticized him many times in his role as union president. Chellis felt that Bagley held the same views as Lariviere.

Many of the events described herein took place at the Club Room Restaurant, a tavern located very near the Company's premises. The drivers customarily stopped there for drinks after working hours and union meetings were often held there in the bar area.

### A. Events of 1981

In June 1981, Lariviere testified he ran for the presidency of the Union and was elected at a meeting where his opponents were Michael Chellis and Bradley Searle. Chellis was elected vice president and Searle was elected secretary-treasurer. At the meeting, Lariviere suggested that the Union propose to management a new 5-day work schedule to be applicable to all drivers then working a 6-day week. The membership agreed that the proposal should be presented to management.

The next day, dispatcher Bob Thompson<sup>5</sup> called Lariviere into his office and said he had heard that the latter had been elected union president. Thompson told Lariviere that "generally after a union meeting he got a run-down of what had occurred." Lariviere said he did not believe he should discuss this with Thompson, and the latter then asked about the 5-day workweek proposal. After Lariviere explained the proposal, Thompson said he and some other members of management were opposed, but that Richard Terpening had already instructed him to work with Lariviere in implementing the proposal.

At a union meeting in July 1981, Lariviere testified, he presented a revised set of bylaws to the membership, and these were adopted. In October 1981, an addendum was adopted requiring the establishment of a special account "for the purpose of paying expenses in and during the course of arbitration." The amount was to be not less than \$200 and not more than \$400. As a result of the adoption of the amended bylaws, union dues were increased. In July 1981, Lariviere sought a meeting with Richard Terpening to discuss a procedure for negotiating a successor agreement to the one that was to expire on July 31, 1981. Richard Terpening told Lariviere that in the past he had drawn the new contract and presented it to the membership at a meeting. Lariviere said that this time the members wanted a different procedure; the Union would like to meet with him, present proposals, and rewrite the contract. Terpening agreed to use the new method.

Early in July 1981, drivers Vern Cummings and William Waite were chosen to represent the Union in negotiations. Later, Howard Bagley was substituted for Waite. In early July 1981, Lariviere accompanied the two men to Richard Terpening's office for the meeting. Charles Terpening was there as well. The union representatives outlined the proposed changes in the contract. Richard Terpening commented briefly and then he said he would get back to the Union in a week. Terpening also said that he agreed to the 5-day work plan but asked that it not be put into the contract.

Richard Terpening did not get back to the Union about proposals, and a union meeting was held in early

<sup>5</sup> The parties agree that Thompson is a supervisor under the Act.

August 1981 to discuss the status of the negotiations. The meeting was scheduled to take place at 5 p.m. Before it began, Lariviere asked Charles Terpening if he could see Richard Terpening to get a proposal to present to his fellow employees. Charles went upstairs to see about this, but did not return, so Lariviere began the meeting. After a few minutes, Richard Terpening, Curt Stiles, and Union Secretary-Treasurer Bradley Searle entered the room. They sat down and Searle stated that Richard Terpening would present the new contract. The latter went through the list of union proposals, indicating which ones management was disposed to grant. Union Vice President Michael Chellis then made a motion that the Company's proposals be accepted. At that point, Lariviere silently left the meeting with Bagley. Later, Lariviere saw that the minutes of the meeting showed that management's proposals were accepted unanimously.

In early September 1981, Lariviere asked Richard Terpening for a copy of the contract. On receiving it, Lariviere signed it.

Driver Arthur Tickner testified on behalf of Respondent Employer. He recalled discussing Lariviere and Bagley with Richard Terpening after the 1981 contract was agreed upon.<sup>6</sup> Terpening had asked Tickner why there was still conflict and why drivers were being harassed, and Tickner replied that Lariviere and Bagley believed in confrontation instead of good relations with management. On another occasion, George Terpening asked Tickner why the Union needed an arbitration fund "all of a sudden." Tickner replied that it was called for in the bylaws and that Lariviere was following procedure under the bylaws. Tickner believed Terpening was concerned about the fund. Tickner did not know how Terpening learned about the fund; however, he believed that anything discussed at the Club Room Restaurant got back to management very quickly.

In early October 1981, dispatcher Thompson informed Lariviere that henceforth his day off would be Thursday instead of Friday. Lariviere called Richard Terpening to protest the change. Lariviere said that Terpening had promised that his word was his bond and that certain matters therefore need not be in writing. Terpening replied that it was for the good of the Company. Lariviere closed by saying, "Okay . . . . However, if I am President, the next time the Association contract is to be renewed, there will be no verbal agreement."

In November or December 1981, Lariviere resigned as president of the Union and Chellis became president.

#### *B. The Contamination Incident*

In January 1982, Lariviere testified, he committed an error by failing to unload all the contents of a fuel truck; this resulted in contamination of some fuel and a monetary loss to the Company. While he was discussing the problem with Richard and Charles Terpening, Charles

asked him, "Are you still hanging around with Howard Bagley?" When Lariviere said yes, Charles inquired, "Is he still running his mouth up at the bar about us. . . . [H]e picked up at a lot of bad habits at Dick's and you should stay away from him because he is in trouble."<sup>7</sup> Lariviere maintained that he was not disciplined for the error he had committed, but both Richard Terpening and Stiles testified that Stiles fired Lariviere and Terpening rescinded the discharge later in the day. The comment about Bagley was not denied and I credit Lariviere's testimony about this remark. As will be discussed further below, I find that both Terpening and Lariviere, while sincerely attempting to be helpful witnesses, were not always successful in accurately recalling events of the past. However, I find that Stiles was a reliable witness with good recall of the relevant events, who gave his testimony without being prompted by leading questions. I credit Stiles' testimony and I therefore find that Lariviere was terminated and then reinstated.

#### *C. The Medical Insurance Issue*

Through 1981, the Employer had not deducted the cost of medical insurance from the employees' checks, and the Company had paid for this benefit as provided by the contract. In January 1982, the Company began to deduct a weekly amount from the drivers' paychecks for Blue Cross/Blue Shield coverage. Lariviere discussed this development with his coworkers. On May 22, 1982, Lariviere saw Chellis at the Club Room Restaurant and asked him if he could hold a union meeting to discuss the medical insurance deductions. The meeting was set for May 26. On May 24, according to Lariviere, he was called to Richard Terpening's office where he saw both Richard and Charles Terpening. Richard Terpening asked him "what is going on" about the medical insurance and, "What are you doing, riling these fellows up again?" Lariviere protested that he was not riling the men up but that there had been some talk and that there should be a meeting to "lay it all out." Richard Terpening then showed him a table of insurance rates and said, "Why don't you tell those guys at the meeting that I just can't absorb these increased rates." Lariviere replied that the deductions were unauthorized, illegal, and in violation of the contract. He invited Richard Terpening to come to the meeting and explain his position to the drivers. On this occasion, Charles Terpening asked if Bagley was involved in the insurance matter and Lariviere denied that he was.<sup>8</sup>

At the trial herein, Chellis acknowledged that he told Richard and Charles Terpening that there was a problem about the medical deductions. In response to a question from the Terpenings, Chellis also told them that Lariviere, Bagley, and Kendall had voiced doubts about the issue.

<sup>6</sup> Tickner was a credible witness; he had a good recall of events and made no attempt to shade his testimony to suit any party in this proceeding. Tickner evidenced a rather explosive and frank personality and tended to exaggerate when he was aroused to anger by the memory of an unpleasant occurrence; however, he was truthful and did not evade questions posed by counsel.

<sup>7</sup> Bagley's former employer, Dick's, had a militant union representing its employees.

<sup>8</sup> Bagley testified that at the time of the controversy over medical insurance deductions, he told Chellis that he was not doing his job as president of the Union because fully paid insurance was guaranteed to the drivers by the contract.

Richard Terpening denied asking Lariviere why he was "riling up the men." Charles Terpening did not testify in the instant proceeding and the allegation about his question was unrefuted. I credit Lariviere's testimony about this incident. Terpening repeatedly showed a great reluctance to recall instances of Lariviere's activism, and I believe that he would be less than reliable when attempting to recall his response to that activism. Further, Chellis, who testified on behalf of Respondent Employer, recalled that both Richard and Charles Terpening had questioned him concerning the views of the employees on the issue of medical deductions. Thus, I find that Respondent Employer violated Section 8(a)(1) of the Act when both Richard and Charles Terpening interrogated Lariviere on May 24, 1982.

At the meeting of May 26, all three Terpenings were present. Chellis opened the meeting by asking Richard Terpening to speak. At that point, according to Lariviere, he stood up and said that Chellis had improperly reported to management that he was causing trouble concerning the insurance and that he would like to see better representation in the future. According to Lariviere, Chellis apologized and Richard Terpening proceeded with his explanation of the Company's position on the insurance deductions. These deductions continued weekly after the meeting according to Lariviere.

#### *D. Election of Union Officers*

The terms of the union officers were due to expire on the first Tuesday in June 1982. In late May or early June, Lariviere spoke to some other employees about running on a slate for the election. Lariviere was to run for president, Vernon Cummings for vice president, and Ed Peenstra for secretary-treasurer. Bagley was to be campaign manager. In early June 1982, Lariviere and Bagley asked Chellis to hold a meeting for the election of officers. Chellis said he would rather not have a meeting until the contract expired, and Lariviere replied that according to the bylaws the meeting was already overdue. Although Chellis promised to get back to Lariviere, he did not. On June 18, Lariviere again asked Chellis to schedule a meeting, and Chellis agreed to hold an election meeting on June 22 at the Club Room Restaurant. Lariviere asked Chellis if he would run again, and Chellis said he would. Lariviere said he was running and stated that he felt sure of seven votes.

A few hours later, Lariviere wrote an election notice and Bagley posted it on the company bulletin board later that evening. Chellis testified that someone from management asked him who posted the election notice, but Chellis did not know who had done it. Chellis testified that he did not tell management that Lariviere was running for a second term as president. Members of management all maintained that in the summer of 1982 they were unaware that Lariviere was a candidate for the union presidency.

On June 22, Lariviere arrived at the Club Room Restaurant at 4:30 p.m. Later, Bagley, Kendall, Chellis, Searle, and Muhl came in.<sup>9</sup> About 6 p.m., Bagley asked

if there was going to be a meeting, and Chellis said there was no quorum and therefore could not be a meeting. The men engaged in general conversation for a while. Lariviere testified that he told Chellis he thought the May 26 meeting had been improperly conducted since it had closed without a vote being taken on the medical insurance deduction. Chellis said the Union should be dissolved, but Lariviere disagreed. Lariviere asked Muhl about the distribution of tickets for the union clambake and inquired whether unauthorized people were receiving free tickets. Before the men went home, Chellis told them an election meeting would be held on June 25 at 5 a.m. in the drivers' room at the Company's premises.

Lariviere admitted having had 3 or 4 beers before the scheduled hour of meeting and one or two more after the men arrived. He was not upset that no one showed up for the election, only surprised. Although some union meetings become rowdy, this one did not, according to Lariviere.

Bagley testified that at this meeting he asked why Muhl was selling tickets to the public for the union clambake. Muhl explained that nothing improper was occurring and the discussion ended.

On the night of June 22, Chellis testified, Lariviere told him that he and the other two union officers had no backbone. Bagley interjected that they were "a bunch of spineless company bastards." Chellis responded by saying he "didn't need" the harassment and name calling that had been going on for several months. Lariviere and Bagley accused the officers of each having little deals with management. Chellis stated that all through 1981 and 1982 Bagley had accused him of not caring about the members or the Union and not being able to stand up to management. Chellis testified that Lariviere was often critical of him on the basis of his incompetency as president and his ignorance of the bylaws and the contract. The two men disagreed about the raising of union dues, establishment of an arbitration fund, and deductions for medical insurance.

According to Muhl, when he arrived at the meeting of June 22, he was immediately called a "yellow bellied scab" by Bagley.<sup>10</sup> Bagley continued with even more severe invective and criticized the performance of all the union officers. Lariviere chimed in with questions about the union picnic.

On June 22, Searle testified, he heard Bagley call driver Harold Kendall a coward. Kendall laughed and left the meeting. Bagley called all the men present "spineless jellyfish." There was a discussion of union funds and picnic tickets. Bagley told Chellis he was a poor leader and had a yellow stripe down his back. When Muhl appeared, Bagley said, "Here comes another one of those fucking yellow bellied scabs."

Arthur Tickner spent about 5 minutes at the Club Room Restaurant on June 22, 1982. Tickner testified that he heard Bagley call Brad Searle a "spineless deal-making asshole." Tickner left soon afterwards.

<sup>9</sup> Muhl was vice president of the Union at this time.

<sup>10</sup> Muhl testified in a careful, attentive, and cooperative manner. He is an intelligent, reasonable person and impressed me as a truthful witness who would not readily be led by counsel. I credit his testimony.

Most of the witnesses called by Respondent Employer testified that a lot of beer was consumed at this meeting and that many of the men had a "buzz on."

Bagley testified that on June 22 neither he nor Lariviere were abusive to any of their fellow employees. He denied saying anything to Searle and could not recall what he said to Chellis. Bagley denied specifically calling any drivers "scab," "fucking scab," "SOB," or any similar names.

Lariviere denied calling Chellis a "deal maker," "ass kisser," "fucking scab," "spineless son of a bitch," or any other similar derogatory epithet. He did recall that on another occasion he told Tickner that he did not have the backbone to stand up to the Company on the medical insurance issue. Tickner's response was to punch Lariviere and invite him outside. Neither of them was sober, according to Lariviere. Lariviere stated that he did not have similar conversations with any other employees. Lariviere testified that none of his fellow workers had ever told him to stop harassing them and that he had never been warned about harassment by the Company. Lariviere denied raising his voice at union meetings.

The testimony of the witnesses about his meeting leads me to conclude that it was rowdy, that considerable beer was consumed, and that a lot of harsh language was employed by all, including Bagley and Lariviere.<sup>11</sup> My observation of the witnesses as they gave testimony concerning the meeting of June 22 convinces me that all of them had some recollection of the events. The other drivers were understandably upset by Lariviere's and Bagley's complaints and thus had a natural tendency to exaggerate their indignation at the language in which the criticism was expressed, while Lariviere and Bagley were understandably reluctant to recall that they had used strong language to the union officers. Having considered the above, I find that the testimony of Chellis, Muhl, Searle, and Tickner concerning the meeting of June 22, 1982, is substantially correct.

#### *E. Gathering of June 23, 1982*

On June 23, Richard Terpening testified, he heard the men complain about name calling at the meeting the night before. Muhl and Chellis said, "It's enough to make you go look for another job," and Harold Kendall said he had applied for another job. Tickner said he could not stand it anymore and, "fuck this place. I have had it." Tickner mentioned being harassed at the diner, the loading rack, and the Club Room Restaurant. Several drivers said the Union should be disbanded. Up to this time, Terpening had only known about some personal conflicts among the men, not any generalized trouble.

According to Stiles, he was talking to Chellis, Searle, and Thompson on June 23, when Chellis brought up the problem with Lariviere and Bagley. He said he was tired of being called a "yellow bellied scab" at the loading dock. Then, Searle said he was often called a "fucking spineless jelly fish." The two men told Stiles that they

<sup>11</sup> This was not an uncommon occurrence. Chellis testified that rough shop talk was common at the Company although it was "jocular" in tone. Frequently used terms were "son of a bitch," "bastard," and "sack of shit."

had been called these names at a union meeting on June 22 and that the name calling had gone over a period of time. Muhl came in and said he objected to being called these names in front of strangers. Other drivers appeared and pretty soon all were talking about their problems with Lariviere and Bagley. Then Charles and Richard Terpening came in and joined the conversation. Muhl told Stiles that he had gotten so angry on occasion that he had serious thoughts about working at Terpening. There was talk of disbanding the Union.

Chellis, Tickner, Muhl, and Searle all testified, in substance, that at the impromptu gathering on June 23, 1982, they made known their complaints about Bagley and Lariviere to members of management. Their testimony shows that: Kendall told the assemblage that he could not take any more "shit" and that he had applied for other jobs because he "couldn't even stop for a beer without getting his ear bent by Bagley and Lariviere"; Tickner said he was taking his problems home and getting an ulcer; Searle said he "did not like two individuals destroying great working conditions for the majority of us"; Muhl said, "I don't like being called a fucking yellow bellied scab" and said he did not like being called obscene names in front of strangers at the Club Room; Searle said the union officers had been called "a bunch of spineless bastards"; and Chellis said he was fed up and thinking of getting another job. In addition, Kendall and Tickner mentioned the possibility of taking a vote to disband the Union. The two agreed that there was no peace, only never-ending "bullshit and aggravation," and that there was "no satisfying Howard and Gene." Tickner told Richard Terpening that the only solution was to disband the Union so that Bagley and Lariviere would have to take up their problems with Terpening personally and not through their fellow workers. Terpening replied that he felt the Union should disband. When Tickner suggested that Government approval would be required to accomplish this end, Terpening replied that the men only needed to take a vote.

#### *F. Discharge of Bagley and Lariviere*

Richard Terpening testified that following the gathering on June 23, 1982, he was very upset about the low morale of the men. He decided that Lariviere cared only about himself, not the Company. Terpening concluded that the problems were responsible for neglect on the job because the pressure was resulting in mistakes by the drivers.<sup>12</sup> The next morning, having decided that he must fire the two men, Terpening discussed the situation with his brothers and Stiles. He told Stiles that he was upset about the low level of morale among the drivers and that he was concerned that men with long years of service felt that they wanted to leave. All three of the managers expressed surprise "that this had gone this far." Stiles was particularly upset that a calm, quiet person like Muhl would think of going elsewhere, and he was concerned that without good drivers the Company could not offer anything to its customers.

<sup>12</sup> Terpening did not describe any specific mistakes related to specific incidents involving Bagley and Lariviere.

Richard Terpening instructed Stiles to inform Bagley and Lariviere of his decision to discharge them. Then he wrote out letters of termination.

According to Stiles, he notified Lariviere by telephone that he was fired. When the latter inquired about the reason for his termination, Stiles said it was for harassment of his fellow employees and misconduct. Stiles did not give him any other reason but referred him to the letter which Lariviere could pick up when he came to clean out his locker later in the day.

According to Lariviere, he spoke to Richard Terpening about one-half hour after receiving Stiles' phone call. When Lariviere asked for an explanation of his discharge, Terpening replied:

Apparently, Gene, you have never understood how this Association operated. You haven't had your hand on the pulse of the membership. You have riled these guys up, you are trying to force them into a union election that they don't want. You are just a problem. I don't know if it is you; I don't know whether it is you or Howard or both, or if he is leading you down the primrose lane or if it is the other way around, but I am going to get rid of both of you and that will solve my problem.

Terpening continued that he had a bull session with a couple of drivers that night before and heard complaints concerning Lariviere and Howard and that he just could not take the strain any more. He mentioned that he could not take the union talk at the bar. He said, "I want to just cut this clean with you. I will give you a good recommendation. Your work has been good. I have no problems concerning your work." At that point Lariviere asked to present his side of the story. Terpening said, "No, I don't want to talk about it." Lariviere then asked about the arbitration procedure. Terpening replied, "There will not be any arbitration." Lariviere said, "I understand that it is up to the Association." Terpening responded, "You have never understood that I run the Association." At that point Lariviere said that he would like to attend the scheduled union meeting and Terpening stated, "Gene, you can come down here and pick up whatever pay you have got coming and any personal items you have got. You can do that today. But after today, I do not want you on my property. If you come on my property I will have you arrested." Then he said goodbye.

Lariviere's affidavit, given July 13, 1982, a few days after his termination, does not state that Richard Terpening said, "I run the Association." Nor does the affidavit state that Terpening said anything about Bagley in connection with a primrose path nor that Terpening was getting rid of both of them. Lariviere stated that this discrepancy was due to the shorter time he spent with the investigator giving the affidavit compared to the longer time he spent with counsel preparing for the trial of the instant case. He did not correct the information in his first affidavit when he met with a Board investigator to give a second affidavit because he believed he would discuss the details with a trial attorney later.

Richard Terpening denied Lariviere's version of this telephone conversation. Stiles, who testified that he overheard Terpening read the letter to Lariviere over the telephone, testified that he did not hear Terpening mention Bagley and a primrose path nor did he hear Terpening say, "I run the Association."

According to Bagley, he was at work on June 24 when he received his discharge letter from Stiles. Bagley then spoke to Richard Terpening, who told him that his attitude and his harassment of other employees had led to his discharge. Terpening said that Bagley's fellow employees had complained about Bagley but he refused to identify any of these employees by name. According to Bagley, Terpening said that Bagley was pushing drivers into things they did not want due to his strong attitude about the contract. Richard Terpening said that if he fired both Bagley and Lariviere "then my problems are over." In response to a leading question, Bagley recalled that Terpening said he "was pushing the Union to the point where I wanted everything in writing."

Stiles testified that he gave Bagley his letter of termination in Richard Terpening's presence. Bagley said he was "guilty by association" but Terpening replied that it was not so and that "you've done your part in this." Soon after this Bagley left. Stiles testified that Terpening did not mention the Union or Bagley's union activities during this conversation. Although Stiles denied it, his affidavit says that Richard Terpening told Bagley that he did not know if "Gene was speaking through Bagley or Bagley was speaking through Gene."

Bagley's affidavits do not refer at all to most of the events he discussed in his testimony. Among these are Terpening's mention of union activity when he was terminated, including Bagley's pushing the drivers and Terpening's ending all of his problems and insisting on having everything in writing. Richard Terpening denied Bagley's version of their last conversation.

Bagley and Lariviere received identical letters on June 24, 1982, stating:

It is the opinion of this company that you no longer wish to work here, and we will oblige you. We have witnesses a long standing [sic] feud that has increasingly brought more and more harassment by you upon your peers. It has now reached the point where the low moral [sic] has been pulling at the guts of your fellow employees and is beginning to affect everyone's attitude and working ability. This misconduct by you against the people you working with can no longer be tolerated. When we have people who no longer wish to get up in the morning to come to their job because of you, changes have to be made for the sake of the company and it's [sic] employees who are happy and like their jobs.

I am sorry that it has come down to this but we have no other choice. For your piece [sic] of mind, our employee's [sic] and ours the decision is that you would be much happier working for others.

Therefore we are relieving you of your duties effective this date of June 24, 1982.

Based on my observation that Richard Terpening showed a reluctance to recall instances of Lariviere's militancy over intraunion matters and, based on the fact that other testimony shows that the Terpenings and Stiles knew the details of union affairs, that Charles, Richard, and George Terpening asked the drivers about union activities, and that Charles Terpening warned Lariviere to stay away from Bagley who was talking too much, I find Lariviere's and Bagley's versions of their termination interviews plausible and reliable. As discussed below, more detailed findings are not necessary.

It is of no moment whether Richard Terpening actually mentioned union activity in his conversations with Bagley and Lariviere nor whether he referred to specific conflicts over the administration or wording of the collective-bargaining agreement. No matter what language was actually employed, the fact remains that Terpening knew the drivers were complaining of being harassed about intraunion conflicts and he discharged Lariviere and Bagley because of this harassment.

The testimony outlined above and the letter of discharge show clearly that Richard Terpening had been aware of problems among the men before June 23, 1982. On that day, however, he was given a detailed description of the harsh disagreements existing among the drivers about union affairs. He was told that the long-simmering problem had come to a boil the night before, and that the men were sick of name calling and criticism of their handling of the Union by Bagley and Lariviere, and he was made aware that some of the men wished to disband the Union. There was also talk by some of the drivers present that they were thinking of looking for other jobs.<sup>13</sup>

Terpening's reaction was to fire Bagley and Lariviere. His testimony makes it clear that he knew he was firing the two dissidents because they were harassing and criticizing their fellow workers as a result of disagreements over how the Union was run and the role of the Union vis-a-vis the Employer.

I am construed to find that these discharges were in violation of Section 8(a)(3) and (1) of the Act<sup>14</sup> Further, I find that the actions of Lariviere and Bagley did not lose the protection of the Act as is contended by the Employer.

In the instant case, the evidence does not show that Lariviere or Bagley interfered either with the work of fellow employees or with the functioning of the Employer's business.<sup>15</sup> The chief source of their fellow employees' complaints, and the foundation of the testimony at the trial, was the conduct of Bagley and Lariviere at union meetings and especially at the meeting of June 22.

<sup>13</sup> Terpening's letter does not say that any driver had actually threatened to quit; it says that people no longer wished to get up and go to work. Because the letter was written when the drivers' comments were still fresh in Terpening's mind, I shall give more weight to the statements referred to therein than to testimony at the trial about what was said on May 23, 1982. Therefore, I find that no employee actually threatened to quit. If he heard a threat to resign, Terpening would surely have mentioned it in his letter.

<sup>14</sup> *Tracy Towing Line*, 166 NLRB 81 (1967); *Star Expansion Industries*, 164 NLRB 563 (1967); *London Chop House, Inc.*, 264 NLRB 638 (1982).

<sup>15</sup> *Salt River Valley Water Users' Assn. v. NLRB*, 206 F.2d 325, 329 (9th Cir. 1953).

It is clear that the conflict and name calling described by all of the witnesses took place in the context of discussions of union business. The subjects of Bagley's and Lariviere's complaints dealt with matters of legitimate concern to the employees in the context of union business—medical insurance deductions, union picnic ticket sales, negotiation of new contracts, election of officers, and the like. Bagley and Lariviere wanted the Union and their fellow employees to be more forceful in pressing union demands to the Employer, and they sought to change the character of the organization. Both men wanted the Union to adopt a more adversary and less compliant attitude toward the Employer.

Although their fellow employees complained bitterly over Bagley's and Lariviere's actions, it is the rule that conflict and controversy, however unsettling or unpleasant, must be tolerated in a union context so long as the concerns expressed by the dissidents are legitimately related to union business and are expressed in a proper setting. Of course, there cannot be a setting more appropriate than a union meeting.

Moreover, not all of their coworkers complained about Lariviere and Bagley; only 5 of the 15 drivers voiced complaints to management. It is clear that management precipitously terminated the two dissidents after receiving complaints from union leadership without any warning or attempt to achieve correction by the two men.

The conduct complained of here did not take place, for the most part, during working hours and at a work location. Except for some nonspecific references to the effect that drivers were harassed at a loading dock, all the conflict took place during union meetings. At those meetings Lariviere and Bagley were lawfully engaged in attempting to change the direction and methods of the Union. While their language was not polite, it appears that the language of the other drivers was not overly nice. Further, meetings at the Club Room involved the generous consumption of beer. My observations during the instant trial make it clear that most of the drivers casually interject strong words in their everyday talk, even on occasion doing so unconsciously while giving testimony under oath. Further, a certain vernacular leeway is permitted in the context of heated exchanges related to labor matters.

There is no evidence that Bagley's or Lariviere's conduct actually interfered with management's ability to direct the work of the employees and to have its products delivered properly.<sup>16</sup>

As to the claim that some drivers were looking for other work, I do not find the testimony on this point persuasive. No testimony was presented to show where and when drivers had applied for other jobs, no ultimatum or specific threat to quit was cited in the testimony, and Richard Terpening's letter only referred to the fact that drivers did not feel like coming to work.

<sup>16</sup> Cf. *Didde-Glaser, Inc.*, 233 NLRB 765, 769-770 (1977); *Master Dynamics Corp.*, 180 NLRB 802 (1970).



### G. Post Discharge Events

The contract between the Employer and the Union provides:<sup>17</sup>

#### Section VI

2. If the Corporation desires to discharge a driver for cause, it shall first advise the Barn Steward of the Union and the reasons for the discharge for cause set forth and an opportunity be given to the driver to hear and explain the charges made by the Corporation against him as the cause for his discharge.

4. The Corporation must give to any driver who it seeks to discharge for cause not less than one week's notice of its intention so to do.

#### Section VII

1. If the Corporation and the Barn Steward of the Union cannot reach a unanimous agreement on any dispute including disputes of the discharge of driver, the dispute shall be referred to the entire membership of the Union, inclusive of the driver or drivers involved in the dispute. If the Corporation and two-thirds of the membership of the Union cannot thereupon agree upon a settlement to such dispute, the Union and the Corporation shall each designate two persons to act as a Board of Arbitration. The four members of the Board so selected shall nominate and select a fifth person in any manner unanimously agreed upon by them. The dispute shall be submitted to the five arbitrators within ten (10) days after their selection and a decision by a majority of the five upon any dispute shall be bonding [sic] upon the Union and the Corporation.

Chellis testified that he heard about the two discharges late on the day they occurred. He was surprised and "relieved." Chellis believed that Lariviere and Bagley had "over exerted themselves upon the membership of the Association with chronic, continuing ongoing harassment on numerous occasions in numerous places, and on numerous subjects. There was no end." He was relieved because he "hoped that all the bullshit would be over with." His surprise over the discharges arose from the fact that he thought management had only learned the day before how deep the internal problems of the Union were.

At the union meeting on May 25, 1982, the members discussed the discharges of Bagley and Lariviere.<sup>18</sup> According to Muhl and Tickner, Chellis asked the membership if the Union should seek arbitration on behalf of the two men. Those who spoke at the meeting all believed that the discharges were for just cause due to the behav-

ior of Lariviere and Bagley and because Bagley had an attendance problem and Lariviere had a record of spills and contamination. The consensus of the meeting was that Bagley and Lariviere deserved to be fired; no one present favored filing a grievance or seeking arbitration.<sup>19</sup> No vote was taken at this meeting, but it was common practice to decide union business without a formal vote.

A few days after his discharge, according to Lariviere, he called Chellis at home and asked about arbitration of his discharge.<sup>20</sup> Chellis said he did not have a copy of the bylaws at home and that he would call back. On a Saturday in July, either July 3 or July 10, Lariviere again called Chellis and asked what he was doing about arbitration. Chellis replied that he had checked the bylaws and the contract. He informed Lariviere that the contract provided that if Chellis and management agreed on the discharge there would be no arbitration. Chellis stated that he agreed with management 100 percent and that there would be no arbitration. No grievances was ever filed on behalf of Bagley or Lariviere.

Lariviere did not ask Chellis to present the question of proceeding to arbitration to the membership nor did he request permission to attend a union meeting and present his position to the membership.

According to Chellis, when Lariviere called him, he asked Chellis what happened at the meeting of June 25. Chellis reported that the officers had been reelected and that there had been some discussion of the two discharges. No vote was taken; however, the consensus of the members was that it was too bad the two had lost their jobs but that they had "brought it on themselves." Lariviere called again, Chellis testified, and asked what Chellis was doing about getting the two men reinstated. Chellis replied, "Nothing," and referred Lariviere to the contract.

There is a conflict in the testimony of Chellis and Lariviere whether Lariviere merely asked what was being done about the two discharges or whether he actually demanded arbitration. It is unnecessary to resolve this conflict because it is clear from the testimony of Muhl and Tickner that the union members understood at the meeting of June 25 that they were being asked whether to arbitrate the discharges. Thus, Chellis clearly knew that Lariviere and Bagley wanted the Union to seek arbitration in their behalf.

No grievance was filed by the Union on behalf of Lariviere and Bagley. It is undisputed that the notice provisions of section VI, quoted above, were not complied with by the Employer and that the Union never sought to enforce that section. Chellis never discussed Lariviere's request for arbitration with management. He testified that in his view there was compliance with paragraph 1 of section VII of the contract in that the Company and the union president agreed that the discharges of Bagley and Lariviere were proper.

<sup>17</sup> In practice, all references to the "Barn Steward" are treated as referring to the union president.

<sup>18</sup> Lariviere claimed to have left a note for Chellis requesting that the union meeting scheduled for June 25 be held off the Employer's premises so that he could attend it, but Chellis testified that he never found the note.

<sup>19</sup> Since 1978 four drivers have been discharged. No grievance was ever filed as a result of these actions.

<sup>20</sup> Lariviere testified that he told Chellis he was calling for himself and for Howard Bagley.



On August 11, 1982, after the charge against the Union herein had been filed, Chellis wrote to Lariviere that "[i]f you so desire at this time, the Association will proceed, under the terms of our contract, towards arbitration of your case." Chellis' letter was written on company stationery and the envelope was stamped with the company postage meter.

Lariviere replied on August 16, expressing his doubts as to the assistance being given to the Union by the Employer and stating that, in view of the "questionable motive and the timing" of the Union's offer, he had decided to consult with a representative of the Board. Later in August, Lariviere again wrote to Chellis pointing out that the Union had not agreed to a settlement proposed by the Board, that the Company may have aided the Union in preparing the offer to arbitrate, and that "a sincere effort to comply with the terms of the contract would have included a similar offer to Howard Bagley."<sup>21</sup> The letter closed by saying, "I would be more than willing to listen to any argument you may wish to present that would convince me that your offer . . . is in the best interest of the union membership and myself." There was apparently no reply to this letter.

Lariviere clearly asked Union President Chellis to do something for him and Bagley. That it was plain to Chellis that Lariviere wanted the Union to seek arbitration is clear from the fact that Chellis posed the question to the union members on June 25. The membership understood that it was being asked whether the Union should take some action in behalf of Lariviere and Bagley with a view to arbitrating their discharges. The Union decided not to take any action because the members agreed with the Employer that the discharges were well deserved. Thus, the Union did not seek to enforce the provisions of the contract providing for notice of intent to discharge and for arbitration of grievances. The Union's letter of August 11, 1982, cannot be viewed as a good-faith offer to proceed with contract remedies; written on the Company's letterhead and stamped on the Company's postage meter machine it hardly inspires confidence that the Union is prepared to represent the two employees fairly in an adversary proceeding against the Company. Further, the testimony and demeanor of the union officers at the trial herein was consistent on the point that Bagley and Lariviere were terminated for just cause and that the Union was correct in not pursuing a grievance on their behalf. I find that the Union failed to enforce the contract, failed to file a grievance, and failed to seek arbitration in violation of Section 8(b)(1)(A) for the reason that Bagley and Lariviere engaged in intraunion protected activities which aroused the hostility of the union leadership.<sup>22</sup>

#### H. Dues Deductions

The parties stipulated that the only dues-deduction authorization forms executed by the Company's employees were dated, variously, October 5, 6, and 15 and December 21 and 28, 1982. There is no dispute that Respondent's collective-bargaining agreement which provides for

the automatic deduction of union dues from the weekly wages of employees has been enforced by Respondents for the terms of the contract from August 3, 1981, to August 1, 1982.<sup>23</sup> Respondents contend that the language of the collective-bargaining agreement is the legal equivalent of a checkoff authorization under the circumstances of this case. Section V, paragraph 3, of the contract provides:

Each new employee shall become a member of the Union and his dues shall become payable at the termination of six months employment by the Corporation . . . . If a driver is still employed after the six month period, the Company will automatically deduct the rate of \$3.00 from his weekly wages to cover union dues.

The Board has held that even where a valid union-security provision obligates employees to pay dues to the Union the employees must sign checkoff authorization cards. Therefore, I find that Respondent Employer violated Section 8(a)(1) and (2) of the Act and that Respondent Union violated Section 8(b)(1)(A) of the Act. *American Geriatric Enterprises*, 235 NLRB 1532 (1978).

#### CONCLUSIONS OF LAW

1. Terpening Trucking Co., Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Terpening Drivers Association is a labor organization within the meaning of Section 2(5) of the Act.
3. By coercively interrogating its employees, Respondent Employer violated Section 8(a)(1) of the Act.
4. By discriminatorily discharging its employees Gene R. Lariviere and Howard Bagley, Respondent Employer violated Section 8(a)(3) and (1) of the Act.
5. By deducting from the wages of its employees amounts equal to union dues without prior written authorization by the employees, Respondent Employer violated Section 8(a)(1) of the Act.
6. By remitting the aforesaid sums deducted from its employees' wages to Respondent Union, Respondent Employer violated Section 8(a)(2) of the Act.
7. By accepting from Respondent Employer and retaining the aforesaid sums representing union dues deducted from the employees' pay without prior written authorization, Respondent Union violated Section 8(b)(1)(A) of the Act.
8. By invidiously failing to represent in good faith Gene R. Lariviere and Howard Bagley in enforcing the collective-bargaining agreement and seeking arbitration of their discharges, Respondent Union violated Section 8(b)(1)(A) of the Act.
9. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that Respondents have engaged in certain unfair labor practices, I shall recommend that they

<sup>21</sup> The date of this letter is illegible.

<sup>22</sup> *Sargent Electric Co.*, 209 NLRB 630, 638 (1974).

<sup>23</sup> The complaint alleges a violation beginning on February 10, 1982.

cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having found that Respondent Employer unlawfully discharged its employees Gene R. Lariviere and Howard Bagley and that Respondent Union unlawfully failed to represent them, I shall recommend that Respondent Employer reinstate them to their former positions or, if no longer available, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges and expunge from its files any reference to the discharges of Gene R. Lariviere and Howard Bagley on June 24, 1982, and notify them in writing that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel actions against them; and I shall not recommend that Respondents jointly and severally make whole Gene R. Lariviere and Howard Bagley for any loss of pay they may have suffered as a result of discrimination against them, less interim earnings, if any. The backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner described in *Florida Steel Corp.*, 231 NLRB 651 (1977).<sup>24</sup>

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>25</sup>

### ORDER

A. Respondent Terpening Trucking Co., Inc., Syracuse, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating any employee about his intraunion activities.

(b) Discharging or otherwise discriminating against any employee to discourage him from engaging in intraunion activities.

(c) Assisting Terpening Drivers Association by deducting from the wages of its employees amounts equal to union dues and remitting these amounts to the Association when such deductions are not sanctioned by its employees through checkoff authorizations.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Gene R. Lariviere and Howard Bagley full reinstatement to their former positions, dismissing, if necessary, employees subsequently hired to replace them, and, if such former positions do not exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges.

(b) Jointly and severally with Respondent Union make whole Gene R. Lariviere and Howard Bagley for any loss of earnings they may have suffered as a result of

their discriminatory discharges in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its shop copies of the attached notice marked "Appendix A."<sup>26</sup> Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by Respondent Employer's authorized representative, shall be posted by Respondent Employer immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Employer to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Employer has taken to comply.

B. Respondent Terpening Drivers Association, Syracuse, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Invidiously failing to represent in good faith employees in enforcing the collective-bargaining agreement and seeking arbitration of their grievances.

(b) Accepting and retaining sums in amounts equal to union dues which have been deducted from the pay of employees of Terpening Trucking Co., Inc. without their prior written authorization.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Jointly and severally with Respondent Employer make whole Gene R. Lariviere and Howard Bagley for any loss of earnings they may have suffered as a result of their discriminatory discharges in the manner set forth in the remedy section of this decision.

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix B." Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by Respondent's authorized representative, shall be posted by Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Deliver to the Regional Director signed copies of the notice for posting by Terpening Trucking Co., Inc.,

<sup>24</sup> See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

<sup>25</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>26</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

if it be willing, at places where notices to Terpening's employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Union has taken to comply.

#### APPENDIX A

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT discriminate against our employees for engaging in activities on behalf of the Union.

WE WILL NOT assist Terpening Drivers Association by deducting from the wages of our employees amounts equal to union dues and remitting these amounts to the Union when such deductions have not been sanctioned by our employees through written checkoff authorizations.

WE WILL NOT question our employees concerning their intraunion activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Gene R. Lariviere and Howard Bagley immediate and full reinstatement to their former jobs or, if those jobs are no longer available, to substantially equivalent jobs, without prejudice to any seniority or other rights and privileges previously enjoyed by them.

WE WILL expunge from our files any reference to the disciplinary discharges of Gene R. Lariviere and Howard Bagley on June 24, 1982, and WE WILL notify them that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel actions against them.

WE WILL, jointly and severally with Terpening Drivers Association, make Gene R. Lariviere and Howard Bagley whole for any loss of earnings they may have suffered as a result of their unlawful discharges.

TERPENING TRUCKING CO., INC.

#### APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT discriminate in our representation of any employee because he engaged in intraunion activities.

WE WILL NOT accept or retain any amounts remitted to us by Terpening Trucking Co., Inc., which have been deducted from employees' wages without their prior written authorization.

WE WILL not in any like or related manner restrain or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

TERPENING DRIVERS ASSOCIATION